

**UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD REGION 32**

(Alameda, California)

CALIFORNIA SCHOOL OF  
PROFESSIONAL PSYCHOLOGY d/b/a  
ALLIANT INTERNATIONAL  
UNIVERSITY

Employer<sup>1</sup>

and

Case 32-RC-5167

CALIFORNIA FEDERATION OF  
TEACHERS, AFT, AFL-CIO

Petitioner

**DECISION AND DIRECTION OF ELECTION**

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, herein called the Act, a hearing was held before a hearing officer of the National Labor Relations Board, herein called the Board.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding<sup>2</sup> the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The parties stipulated, and I find, that the Employer, a non-profit corporation, operates a private university with educational facilities and satellite offices located in the state of California, including educational facilities in Alameda (also referred to as San Francisco

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<sup>1</sup> The name of the Employer appears as stated at the hearing.

<sup>2</sup> Briefs filed by the parties have been duly considered.

Bay Area), Fresno, Alhambra (also referred to as Los Angeles), and San Diego. The Employer also has educational facilities in Nairobi, Kenya and Mexico City, Mexico. During the past 12 months the Employer received gross annual revenues in excess of one million dollars and, during that same time period, purchased and received goods in excess of \$50,000 directly from suppliers located outside the state of California. Based on the foregoing, I find that the Employer is engaged in commerce within the meaning of the Act. Accordingly, the assertion of jurisdiction is appropriate herein.

3. The parties stipulated and I find that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act.

4. The Petitioner seeks to represent certain employees of the Employer, and a question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Section 2(6) and (7) of the Act.

5. The Petitioner seeks to represent a unit consisting of all full-time and regular part-time core faculty employed at the Employer's Alameda, California campus; excluding program directors, adjunct faculty, and all other employees, managerial employees, guards and supervisors as defined in the Act. The Employer argues that the "only" appropriate unit is a university-wide unit consisting of all its campuses and satellite educational facilities in California. The Employer further argues that core faculty members are managerial employees and should, therefore, be excluded from the category of employees entitled to benefits of collective bargaining under the Act. For the reasons set forth below, I find that the petitioned-for unit is an appropriate unit.<sup>3</sup>

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<sup>3</sup> The parties stipulated, and I find, that the faculty employed at the Employer's campuses in Nairobi, Kenya and Mexico City, Mexico, and all adjunct faculty university-wide, should be excluded from the Unit as they do not share a community of interest with the core faculty. The parties further stipulated, and I find, that the deans and assistant vice presidents are managerial employees with the authority to formulate, determine and effectuate

## Background

Alliant International University (AIU or the Employer) was founded in 2001 through a merger of Alliant University/California School of Professional Psychology (CSPP) and United States International University. CSPP was founded in 1969 as the nation's first independent graduate school of professional psychology. CSPP's first students were admitted to its original campuses in San Francisco and Los Angeles in 1970. The San Diego campus was added in 1972 and the Fresno campus in 1973. In 1988, the San Francisco Bay Area campus was moved to Alameda. The Employer's administrative headquarters have always been located in San Francisco. Presently AIU has four California campuses in Alameda, Fresno, Alhambra, and San Diego. AIU also has three satellite centers in Orange County (Irvine), San Diego (Cornerstone) and Sacramento. AIU maintains a centralized computer system, financial aid, and accounting system.

AIU has five schools and colleges: the Graduate School of Education (GSOE); the School of Professional Psychology (CSPP); the California School of Organizational Studies (CSOS); the United States International College of Business (USICB); and, the College of Arts and Science (CAS).<sup>4</sup> The San Diego campus offers courses in each of the Employer's above referenced schools/colleges. The Alameda, Los Angeles and Irvine campuses offer courses in CSPP, CSOS and GSOE. Fresno offers courses in CSPP, CSOS, GSOE and the School of Social and Policy Studies (now part of CAS). Sacramento offers courses in CSPP.

The Employer is governed by its Board of Trustees, which includes a maximum of 24 public members, four students, four faculty members, and the president, who is an ex-officio

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management policies by making operative decisions of their employer and, as such, they shall be excluded from the Unit. Further, the parties stipulated that there is no history of collective bargaining or union representation at any of its campuses.

<sup>4</sup> The School of Social and Policy Studies (SSPS) had been a separate school but has been merged with the programs in the College of Arts and Science (CAS).

member. The faculty and student members of the Board of Trustees are elected by their respective constituencies with no more than one student or faculty member serving from any one campus or any one school or college. The Board of Trustees entrusts the management of AIU to the president.

The president is the chief executive officer of AIU and is responsible for the academic and administrative leadership of AIU. The president is appointed by the board of trustees. Judith Albino is the current president. The president's cabinet is comprised of the president and the executive officers appointed by the president, including the senior vice president, the vice president for academic affairs, the vice president for finance and administration, the vice president for graduate enrollment management and student services, the vice president for undergraduate student services and enrollment management, the vice president for development, the AIU counsel and the secretary to the board of trustees. The President and most of her cabinet are housed in the administrative offices located in San Francisco, California.

There are three assistant vice presidents, one in Alameda, one in Fresno and one in Alhambra (Los Angeles). The assistant vice presidents are responsible for all administrative matters at their site and are the highest ranking administrative personnel at their locations. They coordinate student services and operations, they are responsible for the registrar, financial aid, student business services, the physical plant, and they work closely with program directors.

The "academic administration" consists of deans of each of AIU's five schools/colleges and program directors for certain programs within a school/college. The

deans of GSOE and CSPP are housed at Alameda, the dean of CSOS is in Los Angeles, and the deans of USICB and CAS are housed in San Diego.

Deans provide the major academic leadership and administrative oversight for each of the colleges/schools and report to the vice president of academic affairs. The deans, along with the assistant provosts and provosts, constitute the academic council. Deans are responsible for academic planning, developing and implementing academic policies, and overseeing faculty, staff, budgets, and students of their respective schools. They serve as the chief academic officers of their schools/colleges as well as the chairs of their respective academic councils. They have responsibility for all programs across all campuses that fall within their respective school. Deans maintain contact throughout the month via e-mail and telephone.

The Dean of GSOE, Karen Schuster Webb, who is stationed at the Alameda campus, testified that she visits San Diego, which has the largest GSOE program, about two to three times per month. She also visits other campuses on occasion. Dean Webb holds faculty meetings at each campus at the beginning of each semester. Also, Webb testified that prior to the travel freeze brought about by budget constraints, the GSOE leadership team had monthly face-to-face meetings. Since the freeze, they have conducted their meetings via telephone conference.

There are about 165 core faculty and about 200 adjunct faculty university-wide. At the Alameda campus there are a total 169 faculty members (31 core faculty members, 58 adjunct faculty, and 70 adjunct research faculty), 10 program directors, and 2 deans (GSOE and CSPP). GSOE, at the Alameda campus, employs 5 core faculty members, 8 adjunct faculty, a site program director (Trudy Day), and a system-wide program director (Karen

Donaldson). CSPP employs 22 core faculty members, 22 adjuncts, 70 research faculty, and 6 program directors at the Alameda campus, and CSOS employs 4 core faculty members, 28 adjuncts and 2 program directors there.

### Program Directors

The program directors (hereafter referred to as directors) are the highest-ranking academic officials on sites in which there is no dean; although, the assistant vice presidents are the highest-ranking administrative officials at the campus. Directors are appointed for 3-year terms by the dean and may be re-appointed for consecutive terms. Directors report to and are supervised by the deans. They also work with the assistant vice president on campus to coordinate academic/administrative management of the campus.

There are two types of directors, system-wide and site directors. System-wide directors have virtually the same duties as site directors except that their responsibilities and authority are system-wide. Directors receive additional pay in the form of a \$5000<sup>5</sup> stipend per academic year; receive a reduction in their teaching load; and are assigned to a “nicer” office.

The Faculty Handbook sets forth the duties of directors. The description of these duties is consistent with testimony describing specific examples in which directors have exercised the duties set forth in the handbook. Directors independently recommend decisions that affect faculty such as whether to grant rolling contracts, sabbaticals, merit increases, promotions, retention and hiring. Directors work with the deans in all areas of academic governance, including by providing leadership for the strategic directions of the school/college, serving on campus and school/college advisory councils, managing the

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<sup>5</sup> Some directors may earn more. Porter testified that at least one other director earned a \$10,000 stipend for her program director duties and that the stipend earned by directors is not uniform.

academic program, and developing annual operating and budget plans. Directors provide leadership to the program faculty and are responsible for effective administration and implementation of academic programs, including the hiring, development and retention of faculty and staff. The “minimum requirements” to fill the job of director include “management skills,” “supervisory skills,” and “communication skills.” The latter includes the ability to articulate AIU’s and the schools’/colleges’ mission and strategic goals and objectives, the ability to provide effective information dissemination, upward feedback, and consensus building. The directors’ primary responsibilities include recruiting, hiring, developing, managing and evaluating program staff and faculty, developing and ensuring adherence to an Annual Operating Plan and Annual Budget Plan based on established criteria, preparing reports to administration and faculty regarding student status, and ensuring program continuity and fiscal profitability by working collaboratively with appropriate admissions and enrollment management personnel.

The faculty members report directly to directors. Thus, if faculty have work-related problems or issues the normal protocol is for them to go to the director. Also, if students have a problem with a faculty member, they are to go to the site director who is charged with resolving the problem. Further, deans also direct certain issues to directors. For example, Dean Webb testified that if an office space formerly used by a CSPP faculty member becomes available, she asks the CSPP director if GSOE faculty can occupy the office.

Vice Provost Natalie Porter and core faculty member Harriet Curtis-Boles testified that a dean does not ordinarily get involved in the day-to-day issues that arise among the faculty or students, but does so only after the director has not be able to resolve the problem and the problem has escalated to a more serious level requiring more formal action. Thus, f

an issue cannot be resolved at the director level, it goes to the system-wide director and if not resolved there to the dean.<sup>6</sup> In most cases the site director has the authority to resolve work-related grievances. If the issue is between two faculty members, the director is charged with trying to resolve the problem before the matter escalates to the level of a formal complaint. The ultimate decision once a formal complaint is filed lies with the dean. In one instance in which a student threatened a faculty member, the director worked with student services and campus security to make sure the faculty was protected and that the student was not allowed back in class.

Core faculty member Rhoda Olkin and CSPP Ph.D. Program Director Dalai Ducker testified that if faculty members are going to be absent they report to the applicable director. Also, directors in Alameda have authorized a change in class times without getting approval from the dean. In addition, directors hold weekly meetings with faculty members, in which the director determines the agenda and directs the meetings. System-wide directors have similar weekly teleconference meetings with site directors. Deans have monthly supervisory meetings, either face-to-face or via teleconference, with their system-wide directors in which the participants discuss various matters, including accreditation issues, policy issues, recruitment, quality of life issues, grievances by students or faculty, criteria for rolling contracts, student evaluations, student terminations, and faculty performance issues.

Directors are responsible for quality assurance of the delivery of programs, quality of teaching, and for assuring that the faculty's method of teaching meets credential and accreditation standards. As such, they evaluate faculty and provide corrective feedback if necessary. Directors evaluate faculty by attending their classes and completing an annual

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<sup>6</sup> This practice has been in place since before the merger and continues to date. It is not spelled out in the handbook because an updated written grievance policy is still being drafted.



written evaluation or letter of evaluation. Directors also review faculty evaluations completed by students. Directors make a recommendation to the dean whether to keep a faculty member. Evaluations are kept in a file on campus and may be used to determine whether to renew a faculty's contract or whether to promote the faculty.

Directors exercise disciplinary decisions, including the initiation of termination proceedings. A director at the San Diego campus issued a letter of concern to a core faculty member who was using his university staff to conduct his private practice. The Director told the faculty member his conduct was a problem and that the Faculty Ethics Committee might get involved. After the Director issued the letter of concern and spoke to the faculty member, the faculty member resigned. The Director handled the matter alone. Also, if a director sees that a faculty member's teaching methods do not comport with accreditation requirements, the director will advise the faculty member that they need to change their method because it is not acceptable. GSOE site Program Director Trudy Day of Alameda testified that she attended classes of faculty, took notes and spoke to faculty about her observations, i.e., she told them ways they could improve. Also, GSOE Dean Webb testified that she has received copies of e-mails in which directors indicate concern regarding a faculty member. Webb places such e-mails in the faculty member's personnel file. Although, Dean Webb does not forward those e-mails to human resources, which has a separate employee file, such e-mails may be used when determining future discipline.

Directors are responsible for terminating adjunct faculty. For example, in fall of 2002, CSPP Program Director Diane Adams of Alameda terminated a new adjunct faculty member after receiving complaints from students. Adams testified that after three or four weeks it became clear that the adjunct faculty member was not doing well and, therefore, Adams

replaced that person with another adjunct faculty member. Also, in 2000-2001 or 2001-2002, students complained to Adams about another adjunct faculty member and thereafter, Program Director Adams either fired the adjunct or did not rehire him. In addition, if core faculty receive complaints, or perceive that there are problems, involving adjunct faculty, they direct those complaints to the applicable director.

The site directors are the only people who interview prospective members of the adjunct faculty. Also, the directors make the decision whether to hire adjunct faculty members, after receiving the recommendation from the campus PERC that an adjunct applicant is qualified to teach or supervise a dissertation student. Site Program Director Trudy Day has recommended that 13 adjunct faculty be hired and all thirteen were hired. Directors also evaluate the adjunct faculty members and determine their work assignments.

Directors determine adjunct faculty members' additional compensation for teaching pay within a range set by AIU. For example, if an adjunct faculty member is teaching a course in the CSPP program that pays \$1000 per unit and GSOE wants the adjunct faculty member to teach a class under their program that pays \$1100 per unit, the GSOE director can decide to pay the adjunct faculty \$1100 per unit, as long as it is within the GSOE's allotted budget. Also, if a program that only pays \$900 per unit needs an adjunct faculty member to teach a class from a program that pays \$1000 per unit, the program director can offer the adjunct professor \$1000 per unit, as long as it is within that program's budget. Senior Vice President Connell Persico testified that he was aware of two instances during the last two semesters in which directors approved additional compensation for faculty members.

Directors work with the faculty committee on problem student evaluations. They receive recommendations from the faculty committee, and meet with students who are having

difficulty. Directors are responsible for determining if a student will pass the credentialing program. Also, students direct their requests for a leave of absence to the director who determines whether to grant the request.

Directors shape curriculum and academic standards within their program.<sup>7</sup> Trudy Day, the System Wide Director of the CSPP Ph.D. program in Alameda, testified that she deals with state and national accrediting standards, curriculum and syllabus development and review, and program development and budget. Also, the CSPP Dean and Program Directors decided, without faculty involvement, to split the CSPP into two programs based on accreditation requirements. About two or three years ago, after the Psy.D. and Ph.D. programs were divided into two faculties, Rhoda Olkin had to give up her research cluster with Ph.D. students. In response, Olkin put some of her Ph.D. students in her proposal design class, which is a Psy.D. class. Program Director Diane Adams told Olkin that she could not place Ph.D. students in a Psy.D. class.

With regard to budget matters, site directors make requests for a certain dollar amount of funds based on their needs. For example, if a director has four courses in a semester, three of which are going to be taught by adjunct faculty and one by a core faculty member, the director will request money for three adjuncts. The system-wide director allocates the money requested by the site directors within the budgetary constraints. If the money requested by the site director is more than the program has budgeted, the system-wide director will allocate a comparable percentage for the request.

#### Core Faculty Members

Faculty includes all core faculty members at the distinguished professor, professor, associate professor, and assistant professor levels. In addition to their primary teaching

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<sup>7</sup> In addition, Directors appoint faculty to the various faculty committees.

responsibilities, faculty members participate in academic governance through four levels: University, school/college, program and campus. The AIU-wide governance includes a University Faculty Senate (UFS), University Performance and Evaluation Review Committee (UPERC), and other University level Faculty Committees.

#### Faculty Governance Structure

According to the faculty handbook, the AIU faculty senate (UFS) is the representative governing body of the faculty consisting of elected members. The UFS exists and derives its power from the authority delegated to it by the board of trustees. It consists of one senator from each school within AIU, plus one senator from each campus. Senators are elected for two-year terms by the schools and campuses that they serve. Officers for the UFS consist of a chair and vice chair elected annually for one-year terms by the UFS. Also, the UFS may form committees to address specific issues.

According to the faculty handbook, the UFS meets on a rotating basis at the established campuses with a minimum of four regularly scheduled meetings and four conference call meetings each year. The UFS or its representatives meet monthly with the president and have meetings with the VPAA and her designees. The UFS may provide input and recommendations about University matters that affect faculty, including budgetary issues and the creation or dissolution of programs. The UFS may delegate these tasks to appropriate UFS committees. No testimonial evidence was presented to establish whether the UFS meets and communicates with the president as set forth in the handbook.

According to the faculty handbook, the UPERC is the faculty committee charged with recommending and implementing academic and professional standards that impact AIU and with evaluating the faculty against these standards. The UPERC provides recommendations

to the vice president of academic affairs (VPAA) on promotion and awarding of initial rolling contracts. It serves as the appeal panel upon request of the VPAA on matters in which the UPERC had no prior involvement such as dismissal, termination of a faculty contract, or serious personnel actions resulting from a complaint by or about a faculty member. Finally, the UPERC recommends university-wide policies to the academic council, VPAA and UFS that pertain to faculty roles and responsibilities, hiring, evaluation, retention and dismissal, salary levels, rank and faculty workloads.

The UPERC consists of faculty members who are on rolling contracts with the rank of associate professor or higher. Faculty members are elected for three-year staggered terms. Each of AIU's schools/colleges elects one faculty member. Any campus not represented by this process additionally elects a representative. Currently, Fresno (including Sacramento), Los Angeles, San Diego (including Orange County), and Alameda each have faculty members on the UPERC. Last year was the UPERC's first full year of existence.

Core faculty member Paul Werner of Alameda is the elected chair of the UPERC. He testified that the UPERC provides oversight and coordinates with school and college PERCs. The UPERC has some operational functions and makes recommendations in two evaluative areas: faculty promotions and initial rolling contracts for new faculty. The UPERC does not have a role in the dismissal or termination of faculty. Its only function is to serve as an appeal panel as noted above. In making evaluative recommendations, UPERC has access to the faculty member's file, and the independent recommendations of the program PERC, the director, and the school/college PERC. UPERC makes its own independent evaluative recommendations. The UPERC recommendations, along with the director's recommendations are forwarded to the dean. If a faculty member receives an acceptable

evaluation, then the dean has to determine whether the budget will allow continued employment for the faculty member being evaluated.

The System-wide Advisory Committee (SAC) is a subcommittee appointed by the UFS. This committee is the only source of faculty input on the budget at the university-wide level. The members of the committee include the chairs of the UFS, the University Student Senate, and members of AIU Academic Council and Administrative Council. Presently there are three faculty members on the AIU Budget Committee, one of whom is a director. The chief financial officer provides a proposal to the president setting forth an authorized expenditure level, with a certain percentage of the total budget allocated to operational expenses. The president recommends an operations budget, which is then approved by the board of trustees. The president's cabinet is then responsible for maintaining a budget that is within the budgeted expenditure level.

No specific evidence was given describing the SAC's role in creating the budget. Rather, there was testimony that the SAC is not participating in the current budget process, and that there is no faculty input on the budgeted expenditure level. The SAC is supposed to meet twice a year. However, it only met once last year. The SAC is supposed to be involved in budget review before it is submitted to the board of trustees and it is supposed to be a place where major issues are addressed. Students' and faculty member's attempts to raise certain issues to the committee, such as benefit levels, have been disregarded.

There are different budgets for each school/college by location. Directors work on their program budgets and make recommendations to the dean. The deans then assemble a school-wide budget and makes their recommendation to the provost. The provost makes a recommendation to the cabinet along with all the other vice presidents who will collectively

decide the overall allocations. Provosts have the authority to modify the dean's proposals, and the deans have authority to modify the directors' proposals.

The School/College Governance Structure, and the number of committees at the school or college level, is determined by the school/college size and particular needs. The school/college governance structure may include a school/college Faculty Performance Evaluation and Review Committee, a Curriculum Committee, a Student Evaluation Review Committee, and a Committee for Academic Excellence and Quality Assessment.

Program Governance Structure, through its program committees, is utilized to assist in the implementation of the academic program at the local level and to follow through on policies established at the university or school/college level. Although consistency across similar programs of a college/school is desirable, and in some cases necessary to comply with accreditation and credentialing requirements, flexibility and program distinctiveness may be warranted when academic issues do not cut across programs.

The Program PERC is a program committee and is charged with making recommendations pertaining to faculty personnel issues at the program level, including contracts, sabbatical leaves, merit evaluations, promotion and retention. The Program PERC also helps to ensure that faculty members, especially new members, are informed about AIU's faculty review processes, including orienting and educating the faculty on the review process and providing suggestions on how to thrive within the AIU system.

The Program Student Admission, Retention and Evaluation Committee is responsible for activities pertaining to student admission, retention, and evaluation. Their area of responsibility may include student admissions; evaluating and certifying of completion requirements that lead to graduation of students; and recommendations of dismissing a

student. This committee works in conjunction with the director and is linked to the school/college Student Evaluation Review Committee whose members are appointed by the director.

The campus governance structure includes a Campus Faculty Senate. The CFS is comprised of the core faculty members assigned to that campus. It is responsible for considering issues that are campus-based. Dalia Ducker, the newly appointed CSPP Ph.D. director, has been the chair of the Alameda CFS since 1992. The chairperson is elected by core faculty and directors. The CFS meets about once a semester. The campus senate does not have decision-making authority. The CFS chair serves as a member of the Faculty Standards Review Committee.

#### Core Faculty's Involvement in Academic and Non-Academic Matters

Paul Werner, a core faculty member at Alameda, served on the UFS post merger in 2001-2002, during which time he worked on the handbook committee. During that time period, AIU sought input from the faculty, but had and exercised the ultimate authority in deciding what went into the handbook. Vice Provost Natalie Porter, AIU's liaison to the UFS handbook committee, worked with the UFS to prepare the faculty handbook. The faculty never approved or voted on the faculty handbook. Rather, the handbook committee merely presented their proposals to the AIU administration.

The AIU administration rejected many of the UFS's handbook recommendations. For example, the faculty proposed a tenure system, which was rejected. In the alternative the faculty proposed a five-year rolling contract but ended up with a three-year rolling contract. AIU rejected a detailed spreadsheet system that the faculty senate designed to keep track of faculty workloads to help calculate faculty's work load credits and aid in the faculty



evaluation process. The AIU administration further rejected the faculty's proposal that minimal course load assignment be 6 units and instead implemented a minimal course load of 12 units. Also, AIU changed the criteria used to determine eligibility for sabbatical leave. In addition, AIU eliminated additional compensation to core faculty for teaching additional classes, i.e., teaching a course that might otherwise be taught by an adjunct, and deleted a merit review section that the UFS had proposed.

Also during the post-merger handbook negotiations, AIU implemented a provision limiting faculty's commitments outside of AIU by specifically, discouraging work at other organizations. The faculty, on the other hand, wanted to maintain the policy that viewed outside activities as a benefit that contributed positively toward merit and other reviews. In furtherance of this new policy, AIU sent out a statement indicating that as of the fall of 2003, faculty were absolutely prohibited from teaching elsewhere in similar educational programs. Previously, most of the faculty had worked four days a week and many were engaged in private practices or other full time employment outside of AIU.

Before the merger in 2001, each campus had its own handbook. Sometime between 1997 and 1999, when Alameda core faculty member Rhoda Olkin served on the UFS, the faculty senate provided input for the campus faculty handbook. There were a number of issues on which the UFS and administration disagreed. A portion of the handbook dealing with faculty rules and responsibilities was put forth for a faculty-wide vote. However, after the faculty voted, the administration changed portions of the handbook relating to faculty rules and responsibilities.

AIU created the Academic Affairs Excellence Team (AAET) in the fall of 2002. Vice Provost Natalie Porter and Provost Soraya Coley developed the Team, which consists of 26

members, including 15 faculty from all schools and campuses, 4 directors, three students, two deans, the vice provost and AIU librarian. AIU solicited nominations and Provost Coley selected the faculty and directors from about 48 nominations. The AAET reviewed and evaluated and made recommendations about 38 of AIU's existing school/college programs, i.e., whether they should be eliminated, reduced, combined, enhanced or remain the same. The AAET sought input from faculty at all schools. The dean made independent recommendations to the provost, who in turn made independent recommendations to the president's cabinet for approval. After the cabinet approved the provost's recommendations, the board of trustees approved them without modification. The dean's recommendations, which were adopted by AIU, differed from the AAET's recommendations on six of eleven programs.

The administration sets the academic calendar from year to year without consulting with the faculty. The core faculty members of the Alameda Ph.D. program act as a quasi-curriculum committee, but there is no official faculty curriculum committee at the Alameda campus. There is also no curriculum committee that spans across the different CSPP campuses. The last time there was such a committee was about two to three years ago.

In about the fall of 2002, AIU converted from a quarter system to a semester system so that program courses would have the same course numbers and that there would be a system-wide curriculum. During that same time period, a faculty committee from the GSOE program was established to determine what curriculum changes were needed. The faculty committee drafted recommendations and forwarded them to the PERC curriculum subcommittee for review. The PERC subcommittee then sent the recommendation to the GSOE dean.

On September 3, 2002, Vice Provost Natalie Porter issued a memorandum announcing a new grading policy. Paul Werner, a member of the UFS during the 2001-2002 academic year, testified that the administration did not seek the faculty's input on changes in the grading system. In this regard, Porter testified that a group of about 30 to 40 "people" designated by Provost Coley, including directors and two faculty senate chairs, assisted her in developing the new policy. As of fall 2003, there will be a letter grading system university-wide, with the exception of some courses in student teaching.

The administration decided to merge with USIU without consulting the faculty. Dalia Ducker, who served on the Board of Trustees, testified that during the November 2000 Board meeting, the president announced plans to negotiate a merger with USIU. The members of the Board of Trustees, including Ducker were bound by confidentiality and could not discuss the President's plans with anyone. At the next Board of Trustees meeting the board members, including Ducker, voted to approve the merger. Thus, other than the four faculty members on the Board of Trustees, the faculty did not participate in AIU's decision to merge.

Also, there was no faculty involvement in the decision to relocate the Alameda campus to San Francisco or in determining the new location. The Alameda campus and the administrative offices will be relocated in August 2004 to a single location at One Beach Street in San Francisco to a building that Employer has purchased. The Senior Vice President, Connell Persico, and Vice President of Alameda, Louis Bundy, chose the new location. In June 2002, after the decision to relocate had already been made and the new location had already been chosen, the president did a Power Point presentation to discuss the relocation with the faculty at the Alameda campus. Also after the decision was made and the location was determined, the Employer sent out a survey to the faculty and staff to get

feedback regarding consequences of the relocation. The completed surveys were processed by interim Assistant Vice President Jo Sanzgiri. In about October 2002, the Campus Advisory Council (CAC) was designated as a conduit to communicate issues and concerns about the relocation. However, the CAC, which has no decision-making authority, did not make any recommendations.

During the 1999-2000 academic year, the president's cabinet created several new director positions, which include director positions at the Alameda campus. The faculty had no role in the cabinet's decision. Also, Dalia Ducker testified that when Program Director Diane Adams' three-year term as director expired, her term was automatically renewed without resort to a nomination or any other process.

The president's cabinet determines the target number of students that will be allowed to enroll. First, the directors provide information to the deans and provost, and together they arrive at a target number of the students for each of the programs. The vice president for enrollment management and student services works with the deans to provide a recommendation to the cabinet showing an analysis of the number of estimated students for enrollment in each of the programs.

Faculty members do not determine the number of students in each of their classes. Rather, each quarter/semester, they receive a roster listing the names of students in each of their classes, the size limit and whether any students are on the wait list. Over the years, the class sizes have increased. At one time the campus faculty senate had set class size limits for specific courses, but those limits have not been followed by the administration. Also, the administration has not consulted with faculty to adjust the size limits.

Faculty members also play no significant role in determining student tuition and fees; rather, these matters are determined biannually by the board of trustees based on a recommendation from the president. The president's recommendation is based on a competitor review, financial aid review, and other things such as "initiatives." The competitor review is performed by the institutional research and assessment director who works for the provost. The director of financial aid performs the financial aid review and presents a recommendation to the vice president for marketing and enrollment who then forwards it to the president. Tuition and fees are university-wide but differ by school. There was about a 15 percent increase in undergraduate tuition and 8-10 percent increase in graduate program fees from 2002-2003 to 2003-2004.

In the past year, there were three major "initiatives," each with their own task force, reporting to Provost Coley: Academic Excellence, Quality Work Life, and Student Quality of Life. Each task force generated proposals that had costs attached to them and formed part of the tuition recommendation. However, the record does not establish to what extent, if any, the president relied upon the task forces' tuition proposals in formulating her biannual tuition and fees recommendation to the board of trustees. Also, the Quality of Life Task Force addressed issues of substandard salaries, morale and communications problems, and recommended changing the communication and salary structure. However, the President did not adopt the Task Force's recommendation for faculty salary increases because, according to Senior Vice President Connell Persico, further analysis of the salary recommendation was needed. The record is silent on whether the President adopted the Task Force's recommendation to change the communication structure.

The Student Quality of Life Task Force, chaired by the Alameda Assistant Vice President Louis Bundy and faculty member Trudy Day, also included students, faculty and staff. The Task Force recommended implementing a one-stop-shop model of student services to provide better services to students at reduced cost. The record does not establish what recommendations the president adopted other than to say that she did not incorporate all recommendations.

In addition, core faculty members serve on a Faculty Committee on Student Evaluations (FCSE). FCSE is made up of three faculty members, the Director of the Office of Professional Training, and the Vice President of Administration, Lewis Bundy. FCSE members are appointed by the director for a one-year term as part of their required governance work. On serious matters such as dismissal of a student, FCSE guidelines state that the recommendation of the FCSE should be based on a majority vote. Also, the student handbook contains guidelines for student evaluations, rights, appeal processes, passing, failing, and expulsion. Faculty members have no involvement in writing or revising the student handbook. Problem students come to the attention of the FCSE by way of computer-generated reports from the registrar, when a student's grading forms have shown a certain number of indications of serious concerns regarding the student's performance. The registrar forwards the reports to the FCSE. Also, faculty members serve as advisers to students, and if one of their advisees is having difficulty, the adviser may place the student under the radar screen of the FCSE.

The Dean reversed the FCSE's recommendations on at least two occasions. In spring of 2002, the FCSE and Program Directors Rebecca Turner and Diane Adams recommended dismissing a student. However, then Dean Adele Rabin reversed their decision, allowing the

student to remain. Dean Rabin reversed another recommendation of the FCSE to dismiss an Alameda campus student by allowing that student to enroll in the Fresno program instead.

The amount of money allocated for merit increases is determined by the president's cabinet based on the budget. The provost makes the final decision as to who will receive merit increases. First, faculty members submit a self-nomination application for a merit increase. That application and the faculty member's personnel file is forwarded to the Program PERC for a recommendation. The director makes an independent recommendation. The PERC and director's recommendations are forwarded to the dean who gives the recommendations to the provost. The provost has the authority to reject the deans' recommendations, and the president can veto the provost's recommendations.

The promotions process is also initiated by a faculty member's self-recommendation. The program or site PERC makes a recommendation on whether a faculty member should be offered a three-year rolling contract. The director makes an independent recommendation, as does the dean. Those recommendations go to the UPERC for a recommendation and all recommendations are forwarded to the provost who makes a recommendation to the president. The president then makes a recommendation to the board of trustees.

Sabbaticals are similarly initiated by faculty self-recommendations. Thereafter, the campus or school PERC reviews the faculty request, and makes a recommendation to the director, who in turn makes an independent recommendation to the dean, the ultimate decision-maker on sabbaticals.

AIU implemented a policy limiting the number of faculty who can take sabbatical leave to no more than one seventh of the core faculty from the school. The decision was apparently made without consulting the faculty. Previously, approval of sabbatical leave was

not dictated by institutional scheduling needs. Rather, if the faculty submitted meritorious sabbatical applications, they were generally granted.

Curtis-Boles testified that in fall 2002, when she was serving on the program PERC, Associate Vice President for Student Affairs Ramona Kunard sent her an e-mail indicating that they had two weeks to submit their recommendation to the dean on faculty applications for contract review, sabbatical and promotion. There were a total of 14 applications, six for contract review, seven for sabbatical and one for a promotion. The director made an independent recommendation. Initially, the program PERC recommended five sabbaticals. However, under the new standard set by the administration limiting the number of sabbaticals to one-seventh of the core faculty, the Program PERC could only approve three of the seven applications for sabbatical. Curtis-Boles asked Diane Adams to grant a fourth sabbatical slot and her request was granted.

Curtis-Boles also testified that when she was on the program PERC, the Provost and Vice President for Academic Affairs, Soraya Coley, directed the PERC to use their faculty handbook (prior edition) and defined categories of evaluation. At least 4 of the 10 merit/equity pay increase ratings of the PERC differed from those of Provost Coley. Also, on October 22, 2001, Curtis-Boles, then Chair of the Faculty Standards and Review Committee, wrote a letter to Coley complaining that there were a number of instances in the merit review process where the administration did not support the recommendations of the local faculty committee or school PERC. Her letter also protested what appeared to be a change by the administration in the criteria for granting equity raises, i.e., the administration was granting parity increases based on merit. When the Employer acquired USIU, equity/parity increases were given to reduce geographical variations. However, wage rates still differ among



campuses with core faculty at the CSPP at San Diego paid, on average, the highest, with Alameda second, Fresno third and Los Angeles fourth. There are also pay differences within schools.

Last year, the UPERC made recommendations on about 9 applications for either promotion, rolling contracts, and/or merit increases. Core faculty member Paul Werner testified that the administration seemed to apply different criteria than the PERC. Specifically, in at least three cases, the PERC recommended granting promotions or merit increases to faculty who had busy schedules, involving heavy teaching loads, and advising or governance roles that did not allow them to engage in a lot of scholarship. Provost Coley disagreed with the PERC, claiming that those individuals had insufficient scholarly productivity to warrant promotion or placement on a rolling contract.

Over objections of the faculty, AIU changed the method of determining pay received by faculty during sabbaticals. Previously faculty received 75 percent of their salary during a one-year sabbatical and a full salary during a half-year sabbatical. However, the amount of pay during sabbatical is now tied to the number of dissertation students supervised by the faculty member on sabbatical. Also, in Fall 2002, when Werner drafted bylaws for the Ph.D. program and presented them to Program Director Rebecca Turner, she rejected them. In addition, in the late 1990's, the Employer discontinued retirement contributions for employees with less than two years of employment without notifying the faculty.

New core faculty members are recruited for a program by a Search Committee consisting of core faculty members within a specific program at the campus where the faculty is going to work. Directors appoint the faculty members of the Search Committee. Core faculty member Rhoda Olkin was on a Search Committee that reviewed several applicants for

employment, including the most recent faculty member Lillian Huang-Cummins. Olkin's search committee consisted of four faculty members and one student. The director notified the faculty members during a meeting that they needed volunteers for a search committee. Four faculty members volunteered and those four became the search committee. The chair of the committee was faculty member Elena Jenkins-Monroe.

Once a search committee is established, hiring goals are set and an ad is placed. According to Webb, the committee drafts an advertisement, which is then reviewed and edited, if necessary, by Webb. The ad lists the committee chair as the contact person and all materials are sent to the chair. Olkin's Search Committee reviewed 16 applications, conducted 5 phone interviews, and narrowed the list of applicants to three. The three applicants were asked to make presentations to all faculty and students. Vice Provost Natalie Porter was present for at least one presentation and Program Director Diane Adams was present for at least two of them. The attendees of the presentation, including Porter and Adams, completed a survey about the applicants. The committee reviewed all surveys, voted and forwarded two names, without ranking them, to Adams. The committee only forwarded two names to Adams because they felt that the third applicant was unacceptable. Adams called each member of the committee and asked each member's individual opinion of each of the applicants. Adams then forwarded a recommendation to the dean of CSPP who made the ultimate hiring decision. Natalie Porter, who recently served as the interim dean of CSPP, testified that she couldn't think of example in which core faculty member was hired without the recommendation of a faculty search committee.

Dean Webb of GSOE testified that if she is not on the campus where the interview takes place she separately interviews the applicant via phone conference. Otherwise, she

participates in the interview. Webb testified that she reviews the files of all applicants, including those not chosen by the search committee, to make sure that she agrees with the recommendations of the search committee. For example, during the last search in which twelve people applied, the committee narrowed the choice down to two applicants, but Dean Webb reviewed the files of all twelve applicants. In the two cases in which a search committee interviewed and recommended applicants, Webb agreed with the committee's recommendation.

#### Faculty Benefits

Health and welfare benefits are the same for all core faculty members university-wide. Student employees and adjunct faculty do not receive benefits. If a faculty member works 20 hrs or more per week they are entitled to health, dental, vision care, long-term disability, life, and a 401(k) plan. AIU's retirement contributions do not commence until after 2 years of service. There are three-tiers of co-payments for health and dental benefits based on the employees' amount of salary. Lower-salaried employees make lower co-payments.

#### Faculty Interchange

There have been two permanent transfers from other campuses to the Alameda campus. There was no faculty involvement in decision to make either transfer. In fall 2001, Hossain Yazdan-Panah, a part-time (50 percent) core faculty member, transferred from Fresno to the Alameda campus. Dean Webb, system-wide Program Director Mary Ellen Butler-Pascoe, and Alameda GSOE site Program Director Karen Donaldson were involved in the decision to approve Yazda-Panah's transfer request. Webb interviewed Yazdan-Panah and Donaldson spoke to Yazdan-Panah to determine if he would be a "good match" and what courses he could teach. After speaking to Yazdan-Panah, Donaldson advised Webb that there

were classes at Alameda that Yazdan-Panah could teach. Also, directors at the affected campuses e-mailed Dean Webb with input about whether they had classes Yazdan-Panah could teach and whether Fresno could afford the loss.

In fall 2003, core faculty member George Stamos' requested a transfer from San Diego to Alameda campus. Stamos sent a letter to his director with a copy to Dean Webb. In April 2003, Stamos spoke to Webb about why he wanted to transfer. Involved in Stamos' transfer were Dean Webb, system-wide Program Director, Butler-Pascoe, San Diego campus Program Director of Teacher Education Joel Levine, and Trudy Day, Alameda system-wide director for Teacher Education and Educational Leadership. Stamos' transfer request was granted.

Faculty members have contact with faculty at other campuses through their participation on various university-wide committees (discussed fully below) and on the board of trustees. Otherwise there is no interchange among Alameda faculty and other campuses. Thus, several core faculty members testified that in the twenty or so years that they have worked at the San Francisco Bay campus, they have never taught, or been asked to teach, at any campus other than Alameda. There were, however, examples of limited interchange among faculty of other campuses, such as faculty teaching at both the Fresno campus and Sacramento satellite location, and faculty teaching at both the San Diego campus and the Orange County satellite location either via video-conferencing, Internet, or in-person. The parties stipulated that the approximate distance in miles from Alameda to the other campuses is as follows: to San Diego, 500; to Los Angeles, 350; to Fresno, 180; to Sacramento 90.

### Standardization of Curriculum

Current CSPP Ph.D. Program Director Dalia Ducker testified that she has never been asked by the administration to standardize her curriculum for her courses in cooperation with CSPP faculty at other campuses. However, Trudy Day, GSOE site and system-wide director in Alameda, testified that on August 13, 2003, she would be conducting a meeting with Alameda faculty to compare their curriculum with other campus' curriculum. She testified that her job as a system-wide director is to review the syllabus and curriculum at each campus and make sure that the faculty's course content is consistent and generally covers the same area. Ducker planned the meeting as a response to the State's requirement that AIU eliminate certain variances from the curriculum so that AIU can obtain program approval. Nevertheless, the curriculum continues to be different at each campus and faculty have great latitude in developing course content as long as the course content meets the general accreditation and/or credentialing requirements. Moreover, the Psy.D. and Ph.D. programs at Alameda have preliminary exams different than those of other campuses. Fresno does not have preliminary exams at all. Also, Alameda is the only campus that has a clinical progress and proficiency review, consisting of a third year oral and written exam focusing on a clinical case that a student has had.

### Analysis and Conclusions

#### Program Directors

Section 2(11) of the Act defines a supervisor as:

Any individual having authority, in the interest of the employer, to hire, transfer, suspend, layoff, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or to effectively recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

It is not necessary that an individual possess all of the indicia identified in Section 2(11) of the Act to be considered a supervisor; rather the exercise of any one of these functions is sufficient to convey supervisory authority. Chemical Solvents, Inc., 331 NLRB No. 78 at p.12 (2000). See also Zimmerman Plumbing and Heating Co., Inc., 325 NLRB 106, 109 (1997).

The evidence establishes that directors exercise several of the supervisory functions identified by Section 2(11) of the Act. Directors independently and effectively recommend decisions that affect faculty such as whether to grant rolling contracts, sabbaticals, merit increases, promotions, and whether to hire or fire faculty. Also, directors evaluate and discipline faculty. Thus, one director's letter of concern led to the resignation of one faculty member. Also, directors' evaluations of faculty members become part of the faculty members' files and are considered when faculty members apply for rolling contracts, sabbaticals, merit increases and promotions. In addition, comments or letters of concern issued by directors are relied on for future discipline.

The record also shows that directors are responsible for adjusting faculty grievances and are the first line supervisors to whom the faculty members report. In addition, directors effectively assign work to faculty members. Thus, directors call meetings with faculty, have made changes to curriculum without faculty involvement, and have told faculty what classes their students may and may not be in.

Moreover, the directors' exercise of their supervisory duties is not merely routine or clerical in nature. Rather, the evidence establishes, and the parties stipulated, that the directors exercise independent judgment when performing their supervisory duties. Finally, directors alone hire adjunct faculty, determine their additional compensation rates, evaluate

them, and terminate them. Thus, the directors' exercise of supervisory duties over the non-Unit adjunct faculty also supports a finding that the directors are supervisors within the meaning of the Act. See Detroit College of Business, 296 NLRB 318 (1989). For the foregoing reasons, I find that directors are supervisors within the meaning of Section 2(11) of the Act.<sup>8</sup>

#### Core Faculty Members Are Not Managerial Employees

In Yeshiva University, 444 U.S. 672 (1980), the Supreme Court found that faculty members at that institution were managerial employees who were excluded from the Act's coverage. The Court defined managerial employees as those who "formulate and effectuate management policies by expressing and making operative the decisions of their employer." 444 U.S. at 682, quoting Bell Aerospace Co., 416 U.S. 267, 288 (1974). The Board held that managerial employees "must exercise discretion within, or even independently of, established employer policy and must be aligned with management," and that they must represent "management interests by taking or recommending discretionary actions that effectively control or implement employer policy." Id at 683.

The Court in Yeshiva found that through faculty-wide meetings and participation on faculty committees, the faculty at each of the Yeshiva University schools effectively determined curriculum, grading systems, admissions, matriculation standards, academic calendars, and course schedules. In addition, faculty at some schools made decisions regarding admission, expulsion, and graduation of individual students, and others made decisions involving teaching loads, student absence policies, tuition, enrollment levels and, in one case, the location of a school. In nonacademic areas, the Court found that the faculty made recommendations regarding hiring, tenure, sabbaticals, terminations, and promotions,

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<sup>8</sup> The Employer did not address this issue in its brief.

and that a majority of those recommendations had been implemented. Relying primarily on the faculty's extensive authority over academic affairs, but also noting their predominant authority in nonacademic areas, the Court approved the Second Circuit's conclusion that the faculty members were "in effect, substantially and pervasively operating the enterprise." Specifically, the Court found that the faculty's authority in academic matters was absolute. They decided what courses will be offered, when they will be scheduled, and to whom they will be taught. They debated and determined teaching methods, grading policies, and matriculation standards. The faculty effectively decided which students would be admitted, retained, and graduated. On occasion the faculty's views had determined the size of the student body, the tuition to be charged, and the location of a school.

The Yeshiva faculty members were found to be managerial employees despite occasional vetoes of faculty action caused by "administrative concerns with scarce resources and university-wide balance." Id at 688. In Lewis & Clark College, 300 NLRB 155, 162 (1990), the Board, considering this language in Yeshiva, concluded that there are "college policy questions (i.e., 'financial resources,' 'general institutional goals,' or 'university-wide balance') that are broader than academic policy matters and from which the faculty members may be excluded, yet still remain managerial employees."

In Yeshiva, the Court held that professors may not be excluded merely because they determine the content of their own courses, evaluate their own students, and supervise their own research. Since Yeshiva, the Board has held that it is faculty members' participation in the formulation of academic policy that aligns their interest with that of management. See, University of Dubuque, 289 NLRB 349 (1988); and Livingstone College, 286 NLRB 1308 (1987). Faculty authority in nonacademic matters is accorded less weight in determining



whether faculty are managerial employees. See, Lewis & Clark College, *supra* at 161 fn. 30. In cases where there is substantial indicia of a faculty's managerial status in academic areas, an administration's frequent rejection of faculty recommendations in nonacademic areas, such as faculty promotion and tenure, would not preclude a managerial finding. University of Dubuque, *supra*. Nor does effective recommendation in such nonacademic matters as tenure or promotion require a finding of managerial status. See Loretto Heights College, 264 NLRB 1107 (1982), *enfd.* 742 F.2d 1245 (10th Cir. 1984). It is not a faculty's authority on paper that determines their status, but rather their authority in practice. See, Bradford College, 261 NLRB 565 (1982); and St. Thomas University, 298 NLRB 280 (1990).

Under Yeshiva, a faculty need only exercise effective recommendation or control, rather than final authority, to be deemed managerial. In Lewis & Clark College, *supra*, the Board emphasized that "neither the Board nor the Court requires that a faculty possess absolute or plenary authority in order to be found to be managerial; the standard set forth in the Court's decision is 'effective recommendation or control.'" 300 NLRB 163 at fn. 41. Effective recommendation authority is found where nearly all recommendations are routinely approved by the administrative hierarchy, without independent review. Lewis & Clark College, *supra*.

Since the Supreme Court decided Yeshiva, the Board has determined the managerial or non-managerial status of college and university faculty members in a variety of faculty settings. In support of its argument that the faculty members herein are managerial employees, the Employer has cited numerous cases in which the Board found that faculty members were managerial employees. For example, in University of New Haven, 267 NLRB 939 fn. 3 (1983), the Board found that the faculty had substantial authority to recommend

decisions which formulate, determine, and effectuate management policies, and that those recommendations were, in most cases, effective. During the 6-year period immediately prior to the University of New Haven's refusal to bargain, the faculty promotion and tenure committee submitted 123 positive recommendations to AIU's president. The president followed all of those recommendations. During that same period, the president declined to follow negative recommendations of the faculty in only five instances. Similarly, the recommendations of the faculty sabbatical leave committee had been followed by the administration in every instance save one, and in that case the administration accepted the faculty committee's alternate recommendation. In the area of full-time faculty hiring, the recommendations of the existing faculty were followed in about 90 percent of all cases. Also, faculty or departmental recommendations concerning the hiring of part-time and adjunct faculty were followed in almost every instance, although some undeterminable but apparently small percentage of such hiring may have been performed with little or no input from the full-time faculty.

In Elmira College, 309 NLRB 842 (1992) the division chairs, found to be managerial employees, suggested class schedules, set the number of sections which a faculty member could teach, made recommendations regarding salaries to the administration, and planned the academic calendar. In Elmira, the faculty members had final authority for establishing standards for developing and approving new courses, approving changes in course levels and changes in majors and minors, adding courses, setting credit hours, course content, size of classes, curriculum, grading of students, degree requirements, admission and graduation standards, major and minor requirements, and approving applications for waiving academic

requirements. Further, there was clear evidence that faculty recommendations were generally followed. Id.

In Lewis & Clark College, 300 NLRB 155 (1990), the Board found that faculty effectively controlled academic matters, as nearly all its recommendations were routinely approved, and some academic matters were approved without making recommendations to higher management. Faculty members made academic decisions or effective recommendations in the following academic areas: teaching methods, grades, retention standards, scholastic standards, matriculation standards, admission standards, curriculum and course content, degree and degree requirement, teaching assignments, graduation requirements, academic calendars, departments of instruction, honors programs, scholarship, and financial aid. For example, the faculty approved a new core curriculum, approved new minors, and conversion of the music school to a department, and changed foreign language, math, and writing policy requirements.

In Boston University, 281 NLRB 798 (1986), *enfd.* 835 F.2d 399 (1st Cir. 1987), the Board held that the department chairpersons and full-time faculty were managerial employees. The Board found that the Boston University faculty exercised effective control over matriculation requirements, curriculum, academic calendars, and course schedules and had absolute authority over grading, teaching methods, graduation requirements, and student discipline. The Board also noted that the faculty played an effective role in recommending faculty hiring, tenure, promotions, and reappointments, and that faculty decisions on all policy matters were effectuated in the great majority of instances.

In Livingstone College, *supra*, the Board found faculty members to be managerial employees where they exercised substantial authority with respect to curriculum, degree

requirements, course content and selection, graduation requirements, matriculation standards, and scholarship recipients. The faculty members participated in academic governance through membership on various standing committees and by virtue of a faculty-wide vote on recommendations proposed by these committees. Generally, recommendations approved by the faculty were implemented. The Board placed only limited significance on the fact that the faculty had virtually no input into nonacademic matters such as the budget process, tenure decisions, selection of administrators, and no authority in the hiring and firing of faculty. See also University of Dubuque, *supra*.

By contrast, in University of Great Falls, 325 NLRB 83 (1997), the Board affirmed the Regional Director's conclusion that the faculty members were not managerial employees as defined in Yeshiva. There, the Regional Director found that decisions and recommendations made by committees comprised of only a minority of faculty members could not be said to be "faculty decisions or recommendations." Great Falls, *supra* at 95, fn. 39, citing Loretto Heights College, *supra*, at 1253 in which the Tenth Circuit held that effective control of academic policies cannot be imputed to faculty when faculty comprises a minority of the committee that develops and reviews these policies. Also, there was insufficient evidence to show that committees in which faculty members constituted a majority effectively recommended or otherwise exercised managerial authority. *Id* at 95. Thus, while the record was replete with evidence in University of Great Falls that the committees made recommendations in critical academic areas, the record was vague or silent as to whether such recommendations were generally and routinely approved by the administration or whether those recommendations were independently reviewed and evaluated by higher administrators. *Id*.

Similarly, in Bradford College, 261 NLRB 565 (1982), the Board held that the faculty members were not managerial employees where governance documents indicated that they had substantial authority, but where in practice they had little. The Board found that the faculty did not effectively determine teaching loads, salaries, budget, the filling of administrative positions, faculty evaluations, or certain faculty personnel actions. The Board also found that the administration had canceled an academic session without faculty approval, had sometimes altered grades given by faculty members, and at least in some cases had failed to follow faculty recommendations for the hiring of new faculty members. In determining that the faculty lacked effective authority, the Board considered an accrediting agency's report that reviewed the administration's disregard for stated procedures and for faculty participation in the administration of the college. The Board held that while the faculty and division chairs have the written right to make recommendations, the record shows that such recommendations were often ignored or reversed by the president, by the academic dean, or by both with respect to curriculum, admission policies, graduation of students, course loads, course scheduling, grading of students, faculty hiring or retention, tuition, and faculty salaries. St. Thomas University, Inc., 298 NLRB 280 (1990), citing Bradford, *supra*.

In St. Thomas, *supra*, faculty members did not have absolute control over the curriculum, as all curricular recommendations and every proposal regarding academic policy needed to be approved by the division chairs. Division chairs certified students for graduation, consulted with faculty on syllabus preparation and selection of textbooks, and reviewed proposed class schedules. Further, the administration unilaterally established a law school; eliminated entire degree programs; proposed, drafted, and adopted the vast majority of academic policy and curriculum changes; and played the predominant role in determining

curriculum, grading methods, faculty hiring, and tenure. The Board found that the evidence in St. Thomas did not establish that the faculty, through committees, had effectively recommended or had been the moving force behind the formulation and adoption of policies, and concluded that the faculty members did not exercise managerial authority as set forth in Yeshiva.

Likewise, in Loretto Heights College, *supra*, the faculty members participated in the governance of the college through various faculty-dominated committees. The administration routinely accepted the recommendations of these committees in the areas of academic policy, new courses, grading criteria, faculty promotion, and tenure. In spite of the faculty's power, the Board found the faculty members were not managerial employees. In making that determination, the Board relied in part on the fact that most of the actions taken in which faculty members participated were in the form of recommendations and advice, and that no faculty member was authorized to take any action on the member's own initiative that would be final and binding on the college. The Board also relied on the presence of a large administrative staff. The Board found that such a staff created a very effective buffer between the top management and the lowest echelon, eliminating the need for the college's administration to rely on the faculty for advice, recommendations, and the establishment and implementation of policies.

I find that the facts in the instant case are similar to those cases in which the Board found that faculty members were not managerial employees. Also, I find the Regional Directors' Decisions in Sacred Heart University, Case 34-RC-1876 (May 25, 2001) and The Sage Colleges, Case 3-RC-11040 (July 31, 2001), cited by the Employer, distinguishable. In both those cases, unlike the instant case, faculty members' recommendations on academic

matters such as admissions standards, academic calendars, grading policies, new degree and non-degree programs, and student admission limits were followed by the administrators in most instances.

In this case, the evidence shows that the AIU faculty members undoubtedly participate in committees that address issues regarding the governance of AIU. However, the record also demonstrates that the administration has often disregarded faculty recommendations, or bypassed the faculty altogether when making decisions on major academic and non-academic issues. While faculty members sit on the board of trustees, which has ultimate decision-making authority on certain academic and non-academic issues, there are only four faculty members on the 32 member Board. Thus, the faculty can never effectively recommend an action that the majority, non-faculty members do not approve. See University of Great Falls, *supra* at 95. Moreover, there an equal number of students and faculty members on the Board of Trustees, and students certainly are not managerial employees of AIU by virtue of their role on the Board of Trustees.

In addition, there is no evidence that the committees on which the faculty members constitute a majority are other than advisory in nature, having only the authority to recommend. Thus, all academic and non-academic recommendations made by the committees are independently reviewed and evaluated by higher administrators, often by several layers of non-faculty administrators. Moreover, there is also evidence, including numerous letters of complaint sent by faculty members to the administration, regarding the administration's failure to include faculty in the academic and administrative decision-making process, and failing to follow the faculty's recommendations. In sum, the evidence establishes that while faculty members, through the various faculty committees, make

recommendations regarding many academic and non-academic matters, those recommendations are not binding on AIU and are often ignored. Further, the faculty members are often left out of the decision-making process altogether as evidenced by AIU's unilateral implementation of various academic policies.

Also, here, unlike Yeshiva and other Board cases finding faculty to be managerial employees, there is an effective administrative buffer (directors, deans, vice provosts, provosts, and vice presidents) between the Employer's president and the faculty committees. See Loretto Heights College, *supra* at 1107 fn. 2. In the instant case, the faculty members' role on the various committees and in the faculty senate seems to be more as a spokespersons for their coworkers, akin to union representatives, rather than as demonstrating an alignment of the faculty members with management. The faculty's role in negotiating with AIU over the contents of the handbook, which was appropriately described as "give and take," is a key example.

For the foregoing reasons, I find that the core faculty members are not managerial employees as defined in Yeshiva and instead are employees subject to the Act.

#### Unit Scope

The Employer argues that a single location unit consisting of only core faculty members at the Alameda, California campus would not be an appropriate unit and that the only appropriate unit would have to include the core faculty members at all of the Employer's campuses located in the United States. A single facility unit is presumptively appropriate unless it has been so effectively merged into a more comprehensive unit, or it is so functionally integrated that it has lost its separate identity. See J&L Plate, 310 NLRB 429 (1993) and Samaritan Health Services, 238 NLRB 629 (1978). "In determining whether a



particular group of employees constitutes an appropriate unit for bargaining where an employer operates a number of facilities, the Board considers such factors as prior bargaining history, centralization of management particularly in regard to labor relations, extent of employee interchange, degree of interdependence or autonomy of the plants, differences or similarities in skills and functions of the employees, and geographical location of the facilities in relation to each other.” Cornell University, 183 NLRB 329, 336 (1970).

There are some factors that weigh in favor of a multi-facility unit. For example, core faculty members at all campuses and satellite locations perform similar work, receive the same benefits, and work under the same faculty handbook. Also, the Employer has a centralized computer system, and centralized financial aid and accounting programs. Such factors are not uncommon and are not dispositive in multi-location cases. See Foodsystems, Inc., 328 NLRB 426 (1999).

Other factors weigh against a finding that only a university wide unit would be appropriate. The 12 directors and deans who are present at the Alameda campus directly supervise the 31 core faculty members and 138 adjunct professors and researchers at the Alameda campus, and the site directors do not supervise faculty members at other campuses. These directors and deans have significant autonomy over certain aspects of the Alameda faculty’s terms and conditions of employment. As noted above, directors prepare evaluations of the faculty members at their campus, inform faculty members of ways to improve their teaching, and have the authority to change the hours of a scheduled class. Directors can also decide which faculty members will be assigned to recently vacated offices and are responsible for attempting to resolve disputes involving faculty members before those disputes become formal grievances, which are to be resolved by the applicable dean. Moreover, directors are

expected to recommend personnel actions that affect the faculty such as whether to grant rolling contracts, sabbaticals, merit increases, promotions, retention and hiring. The wage rates differ by campus, and tuition and fees differ by school. Also, there are separate budgets for each school by location. In addition, hiring is not centralized. Rather, deans and directors handle hiring at the campus level with the assistance of a campus search committee. Further, although there are certain accreditation and credentialing requirements that apply to programs university-wide, the curriculum and course content is not the same at each of the various campuses. The degree of local autonomy of the individual campuses strongly undercuts the Employer's attempt to rebut the single facility presumption. Foodsystems, Inc., supra.

Also significant in supporting the applicability of the single facility presumption is the geographical distance between the campuses, which are located from about 90 to 550 from the Alameda campus. Also significant, and militating against a finding of a University wide unit is the limited amount of employee interchange among the various campuses. Thus the record shows that faculty members from various campuses would not ordinarily meet one another as part of their duties, unless they are on the board of trustees, University Faculty Senate or other university-wide committee that has full committee meetings. It appears that even those faculty/committee members would normally not meet with faculty/committee members from other campuses more than four times a year. Faculty members at different campuses may also communicate via telephone and e-mail on a more regular basis; although the extent of such contacts is not in evidence. With regard to transfers, the record shows that in the last two years there were only two permanent transfers of core faculty members to another campus. There is no evidence of faculty members transferring from other campuses to the Alameda

campus and no evidence of any temporary transfers. I find this minimal interchange insufficient to rebut the single facility presumption. Cargill, Inc., 336 NLRB No. 118 (2001).

Moreover, I find that the cases cited by the Employer, including Fairleigh Dickinson University 205 NLRB 673 (1973), are distinguishable. Specifically, in the present case, unlike Fairleigh Dickinson, no other union is seeking to represent the core faculty in a broader unit. See Claremont University Center, 198 NLRB 811 (1972). Moreover, there is significant local autonomy and there is no prior bargaining history to consider. For all of these reasons, I find that a single-facility unit at the Employer's Alameda, California campus is appropriate.

In summary, and based on the foregoing, I find that the following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time core faculty members employed at the Employer's Alameda, California campus; excluding program directors and all other employees, managerial employees, guards and supervisors as defined in the Act.

There are approximately 31 employees in the unit found appropriate.

#### **DIRECTION OF ELECTION**

The National Labor Relations Board will conduct a secret ballot election among the employees in the unit found appropriate above. The employees will vote whether or not they wish to be represented for purposes of collective bargaining by the CALIFORNIA FEDERATION OF TEACHERS, AFT, AFL-CIO. The date, time, and place of the election will be specified in the notice of election that the Board's Regional Office will issue subsequent to this Decision.

### **Voting Eligibility**

Eligible to vote in the election are those in the unit who were employed during the payroll period ending immediately before the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Employees engaged in any economic strike, who have retained their status as strikers and who have not been permanently replaced are also eligible to vote. In addition, in an economic strike which commenced less than 12 months before the election date, employees engaged in such strike who have retained their status as strikers but who have been permanently replaced, as well as their replacements are eligible to vote. Unit employees in the military services of the United States may vote if they appear in person at the polls.

Ineligible to vote are (1) employees who have quit or been discharged for cause since the designated payroll period; (2) striking employees who have been discharged for cause since the strike began and who have not been rehired or reinstated before the election date; and (3) employees who are engaged in an economic strike that began more than 12 months before the election date and who have been permanently replaced.

### **Employer to Submit List of Eligible Voters**

To ensure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to a list of voters and their addresses, which may be used to communicate with them. Excelsior Underwear, Inc., 156 NLRB 1236 (1966); NLRB v. Wyman-Gordon Company, 394 U.S. 759 (1969).

Accordingly, it is hereby directed that within 7 days of the date of this Decision, the Employer must submit to the Regional Office an election eligibility list, containing the full

names and addresses of all the eligible voters. North Macon Health Care Facility, 315 NLRB 359, 361 (1994). This list must be of sufficiently large type to be clearly legible. To speed both preliminary checking and the voting process, the names on the list should be alphabetized (overall or by department, etc.). Upon receipt of the list, I will make it available to all parties to the election.

To be timely filed, the list must be received in the Regional Office, located at the Oakland Federal Building, 1301 Clay Street, Suite 300N, Oakland, California 94612-5211, on or before **September 30, 2003**. No extension of time to file this list will be granted except in extraordinary circumstances, nor will the filing of a request for review affect the requirement to file this list. Failure to comply with this requirement will be grounds for setting aside the election whenever proper objections are filed. The list may be submitted by facsimile transmission at (510) 637-3315. Since the list will be made available to all parties to the election, please furnish a total of **two** copies, unless the list is submitted by facsimile, in which case no copies need be submitted. If you have any questions, please contact the Regional Office.

#### **Notice of Posting Obligations**

According to Section 103.20 of the Board's Rules and Regulations, the Employer must post the Notices to Election provided by the Board in areas conspicuous to potential voters for a minimum of 3 working days prior to the date of the election. Failure to follow the posting requirement may result in additional litigation if proper objections to the election are filed. Section 103.20(c) requires an employer to notify the Board at least 5 full working days prior to 12:01 a.m. of the day of the election if it has not received copies of the election

notice. Club Demonstration Services, 317 NLRB 349 (1995). Failure to do so estops employers from filing objections based on nonposting of the election notice.

### **RIGHT TO REQUEST REVIEW**

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, D.C. 20570-0001. This request must be received by the Board in Washington by 5 p.m., EST on **October 7, 2003**. The request may **not** be filed by facsimile.

Dated: September 23, 2003

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Alan B. Reichard, Regional Director,  
National Labor Relations Board  
Region 32

32-1275

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